



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/170787

PRELIMINARY RECITALS

Pursuant to a petition filed December 11, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on February 23, 2016, at Neenah, Wisconsin.

The hearing was previously scheduled for January 6, 2016. The petitioner requested to reschedule the hearing. The hearing was rescheduled to February 2, 2016. At the February 2, 2016 date the petitioner provided documentation regarding identity theft. The hearing was started, but adjourned to allow the petitioner additional time to work with the agency, and potentially resolve the case. The parties never resolved the case, and the hearing continued and concluded on February 23, 2016.

The issue for determination is whether the petitioner timely appealed a June 2012 tax intercept notice.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is currently a resident of Winnebago County. During the time the FoodShare (FS) benefits were issued she was a resident of Milwaukee County.
2. On January 23, 2012 the agency sent the petitioner a notice of FS overissuance, under claim number [REDACTED], stating that she was overpaid \$6,252 in FS benefits from January 1, 2011 to December 31, 2011.
3. On February 2, 2012 the agency sent the petitioner a repayment agreement.
4. On March 2, 2012, April 3, 2012, and May 2, 2012 the agency sent the petitioner dunning notices reminding her that she still owed the entire FS overpayment under claim number [REDACTED].
5. On June 15, 2012 the agency sent the petitioner a notice stating that they were going to intercept her taxes to collect the unpaid FS overpayment under claim number [REDACTED].
6. On December 15, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

A Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook*, §7.3.1.8. If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the person must have received three or more dunning notices and the debt must be:

1. Valid and legally enforceable.
2. State: All error types
Federal: All error types.
3. State: At least \$20;
Federal: At least \$25.
4. State: At least 30 days from notification of Overissuance;
Federal: Not more than 10 years past due from notification date except in fraud cases. There is no delinquency period for fraud.
5. Free from any current appeals.
6. Incurred by someone who has not filed bankruptcy, nor has their spouse.

FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept

Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general

relief benefits, overissuance of FS, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3).

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... **may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.**

Emphasis added

A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2; FSH §7.3.2.11

The agency argues that the petitioner's appeal is untimely. I agree with the agency. The petitioner's appeal of the tax intercept is untimely because she is outside the 30 day window. The date of the notice was June 15, 2012, and our agency received the petitioner's request on December 15, 2015. This is over three years past the petitioner's 30 day deadline.

The petitioner initially argued that she did not get the proper notices. I do not find this testimony credible. Initially, the agency stated the incorrect address. The petitioner corrected the agency's error. The agency then turned to the exhibits, and realized that they had misspoken, and that the notices were sent to the correct address. The petitioner then stated she had moved from that address prior to when the notices were sent. She has not provided documentation of when she moved. All of this testimony is convenient and self-serving for this petitioner.

I further note that the petitioner admitted that she knew about the overpayment as far back as six or seven months ago. She had been receiving FS benefits for the last year, and just recently had gotten around to requesting a hearing on the overpayment issue. Given this testimony, and a 30 day time limit to appeal a tax intercept, her appeal is untimely even if she did not receive the notices. She admittedly has known about the tax intercept and overpayment for six months, and did not request a hearing within that time period. Nonetheless, I find that she received the notices. If for some reason I am incorrect, her appeal is still untimely.

At the hearing the petitioner's main issue was that she was not responsible for the overpayment. She argued that she was a victim of identity theft, and that she did not actually receive FS benefits in two states. Rather, another person used her name to obtain these benefits. There is a mandated 90 day time limit for filing an appeal in a FS case. See 7 C.F.R. §273.15(g); also Wis. Adm. Code §HA 3.05(3)(b). The overpayment notice was from 2012. The petitioner did not appeal until the end of 2015. Thus, I am without jurisdiction to decide this case on the merits. I note that if I did have jurisdiction, I would decide in the agency's favor. Although I believe that the petitioner was a victim of identity theft at some point, I also believe that the petitioner was the person responsible for this overpayment.

CONCLUSIONS OF LAW

The petitioner's appeal of a June 2012 tax intercept notice is untimely, and I am without jurisdiction to decide whether the agency properly implemented the tax intercept.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 7th day of March, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 7, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit